Supreme Court, U. S.
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1979

STAN SKOKO, THOMAS TELFORD and ROBERT SCHUMACHER, Board of County Commissioners, on behalf of CLACKAMAS COUNTY OREGON, A Political Subdivision of the State of Oregon,

Petitioners,

v.

CECIL D. ANDRUS (successor to Thomas Kleppe) SECRETARY OF THE INTERIOR OF THE UNITED STATES, and W. MICHAEL BLUMENTHAL (successor to William Simon) SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR INTERVENORS-RESPONDENTS IN OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

STAN SKOKO, RALPH GROENER (Successor to Thomas Telford) and ROBERT SCHUMACHER, Board of County Commissioners, on behalf of CLACKAMAS COUNTY, OREGON, a Political Subdivision of the State of Oregon,

Petitioners,

v.

CECIL D. ANDRUS (successor to Thomas Kleppe), SECRETARY OF THE INTERIOR OF THE UNITED STATES, and W. MICHAEL BLUMENTHAL (successor to William Simon), SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents,

and

JEANETTE SIMERVILLE, LARRY CALLAHAN and DALE D. SCHROCK, Board of County Commissioners, on behalf of BENTON COUNTY, OREGON, et al,

Intervenors-Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

The questions presented by the Petitioners are not properly raised by this case. The true questions presented

are:

"1. Does the lower Court have jurisdiction over the subject matter, or is the relief sought a matter of concern of the Court of Claims?

"2. Whether plaintiffs' Complaint states a claim upon which relief can be granted, namely, whether the plaintiff, Clackamas County, plus seventeen other Western Oregon Counties are entitled to a fund certain and that said funds should be paid out by the Secretary of the Treasury and Secretary of the Interior, pursuant to Title II of the McNary Act of 1937 (50 Stat. 874)."

ARGUMENT

Intervenors would make this key point: Both the opinion of the 9th Circuit Court of Appeals and the questions presented by petitioners are far afield of the issues on appeal.

The question before this court does <u>not</u> involve the sovereign rights of the state of Oregon, nor the powers of

the Congress over the O & C lands and revenues, nor the title to the lands, nor any other such question.

No such issues were before the courts below.

Petitioners did not seek to enforce any sort of interest in the lands, nor did they challenge the authority of Congress to legislate with regard to revenues from the lands. Rather than <u>challenging</u> the legislation, they sought to <u>enforce</u> it as they interpreted it. Their action was based solely on the McNary Act, and they prayed for payment of millions of dollars claimed due under the provisions of that Act.

The District Court of Oregon held that it lacked jurisdiction over money claims against the federal government in that amount. Accordingly, it dismissed and denied petitioner's motion

for summary judgment. On appeal to the 9th Circuit Court of Appeals, petitioners correctly stated the questions as follows:

> "1. Does the lower Court have jurisdiction over the subject matter, or is the relief sought a matter of concern of the Court of Claims?
>
> "2. Whether plaintiffs' Complaint states a claim upon which relief can be granted, namely, whether the plaintiff, Clackamas County, plus seventeen other Western Oregon Counties are entitled to a fund certain and that said funds should be paid out by the Secretary of the Treasury and Secretary of the Interior, pursuant to Title II of the McNary Act of 1937 (50 Stat. 874)."

The Court of Appeals affirmed the Oregon District Court. However, in so doing, it issued an opinion going far beyond the questions of jurisdiction and statutory interpretation. The Court stated:

> "However, there is nothing in the Revestment Act nor in subsequent acts nor in the decisions of the Supreme Court that purports to subject the lands to a trust in favor of the Oregon counties, or to create a contract between Congress and the counties entitling the latter to any monies from the fund. Title to the revested lands was established in the United States, subject to no restrictions, covenants or conditions whatever. The lands became part of the public domain* * *." See petitioner's Ab 26.

The court also said that the O & C lands were "exclusively the property of the United States," that "Congress could amend or repeal the act in question without infringing any right of the counties" and that the counties had "no rights. . . to the continuance of Congress' bounty."

The question of the counties' rights <u>apart from the provisions of the McNary Act</u> have never been litigated. It is true that the various briefs filed by

petitioners in this action contain many references to "the sovereign rights of the state of Oregon," the "beneficial interest" of the counties and lands, etc. However, these questions have never been properly before any court. They have not been the subject of testimony, evidence, adversary briefing or adversary argument.

These questions remain open.

It is unfortunate that the 9th Circuit Court of Appeals chose to depart from the issues before it and to issue dicta on matters of such potential significance. However, on the issue before it, the court correctly affirmed. The District Court for the District of Oregon lacked jurisdiction even to entertain this case, let alone to issue summary judgment for petitioners. That point, and that point alone, is determinative of this petition for certiorari. The

questions presented by petitioners in their petition should be resolved only when they are litigated.

CONCLUSION

For the foregoing reasons, intervenors-respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Of Attorneys for Intervenors-Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of August, 1979, I served the within Brief upon Donald C. Walker, Kenneth E. Shetterly, attorneys for petitioners, and on the Solicitor General Department of Justice, Attorney for Respondents, by mailing three certified true copies of same to each, by depositing in the United States Postoffice at Portland, Oregon, a full, true and correct copy thereof, with postage prepaid thereon addressed to:

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